

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MONSTER CABLE PRODUCTS, INC, a California Corporation,

NO C 10-5902 EMC

Plaintiff,

ORDER TO SHOW CAUSE

v

MIZCO INTERNATIONAL INC, a New York Corporation; MIZCO, LLC, a New Jersey limited liability company,

Defendants.

On December 27, 2010, plaintiff Monster Cable Products, Inc filed a complaint against defendants Mizco International Inc and Mizco, LLC alleging trademark infringement under 15 USC § 1114, false designation of origin under 15 USC § 125(a) and unfair competition under California Business and Professions Code § 17200, et seq. Complaint at 4-6. Plaintiff alleges that it is the exclusive owner of several common law and registered trademarks, including the registered trademark "Monster" for headphone products. Complaint at 3. Plaintiff alleges that defendants infringed plaintiff's trademarks by advertising and offering to sell to the public a headphone product bearing the mark "Monster".

1 Buds." Id. Attached to the complaint is an advertisement that  
2 plaintiff alleges was published by defendants and shows that  
3 defendants intend to display their Monster Buds product at the  
4 Consumer Electronics Show ("CES") in Las Vegas, Nevada in early  
5 January 2011. Id.

6 On December 28, 2010, plaintiff filed an ex parte  
7 application for a temporary restraining order. Plaintiff requests  
8 an order preventing defendants from using, shipping, selling,  
9 offering for sale, holding for sale, advertising or promoting its  
10 Monster or Monster Buds headphone products. Proposed Order  
11 Granting Plaintiff's Application For Temporary Restraining Order at  
12 1. Plaintiff specifically requests that defendants be prevented  
13 from selling or advertising their Monster Buds product at CES,  
14 which begins on January 6, 2011. Id at 1-2. Plaintiff's  
15 application was transferred to the undersigned in the absence of  
16 the magistrate judge presiding over this case. A certificate of  
17 service appears to satisfy Civil LR 65-1(b).

18 The showing required for a temporary restraining order  
19 mirrors that required for a preliminary injunction. Stuhlbarg  
20 Int'l Sales Co, Inc v John D Brush & Co, Inc, 240 F3d 832, 839 n7  
21 (9th Cir 2001); Lockheed Missile & Space Co, Inc v Hughes Aircraft  
22 Co, 887 F Supp 1320, 1323 (ND Cal 1995). Plaintiff "must establish  
23 that [it] is likely to succeed on the merits, that [it] is likely  
24 to suffer irreparable harm in the absence of preliminary relief,  
25 that the balance of equities tips in [its] favor, and that an  
injunction is in the public interest." Winter v National Resources  
27 Defense Council, Inc, 555 US 7, 24-25 (2008). In lieu of  
28 establishing that it is likely to succeed on the merits, plaintiff

1 may secure a temporary restraining order by raising "serious  
2 questions going to the merits" and showing "the balance of  
3 hardships tips sharply in their favor." Alliance for Wild Rockies  
4 v Cottrell, 622 F3d 1045, 1049-1050 (9th Cir 2010).

5 This action was initially assigned to Magistrate Judge  
6 Chen. The parties must consent to proceed before a magistrate  
7 judge. 28 USC § 636; Civil Local Rule 73-1. It does not appear  
8 that the parties have consented to have the instant application  
9 heard by a magistrate judge. Therefore, on or before January 3,  
10 2011 the parties shall advise the court whether they consent to  
11 have plaintiff's application for a temporary restraining order  
12 decided by Magistrate Judge Chen. If the parties so consent, this  
13 order shall be returnable to Magistrate Judge Chen; if the parties  
14 do not consent, this order shall be returnable to the undersigned.  
15

16 Now, therefore, defendants are ORDERED to SHOW CAUSE why  
17 a temporary restraining order should not issue enjoining them from  
18 using, shipping, selling, offering for sale, holding for sale,  
19 advertising or promoting the Monster or Monster Buds headphone  
20 products. Defendants shall file a written response to this order  
21 to show cause and plaintiff's application for a temporary  
22 restraining order on or before January 3, 2011.

23  
24 IT IS SO ORDERED.  
25



26  
27 VAUGHN R WALKER  
28

United States District Chief Judge